large part of the surplus as a dividend to shareholders, by the directors, was a breach of duty on their part.

The trial court held with the plaintiffs upon propositions (1), (2), and (4), and ordered the distribution of one-half of the surplus (after deducting the dividends already declared), as a special dividend to the shareholders, amounting to $19,275,385. The Supreme Court reversed the lower court upon all these propositions except (4), and held there was no monopoly created contrary to the Anti-trust Law as alleged in proposition (3). In ruling as the Supreme Court did upon the first three propositions, it followed substantially all the authority there is.

In affirming the decree of the lower court on proposition (4), the court relied mainly upon facts which showed clearly that more cars could be sold at the price of $440 than the Company could make, and that Mr. Ford exercised a dominating influence over the business and had confessedly adopted an attitude toward the shareholders that, having already received great gains, they should be content with them or their continuance; that the profits were too large; and that by a reduction in the price, these profits should be shared with the public.

The court says, OSTRANDER, C. J., "A business corporation is organized primarily for the profit of the stockholders. The powers of the directors are to be employed for that end. The discretion of directors is to be exercised in the choice of means to attain that end, and does not extend to a change in the end itself, to the reduction of profits, or to the non-distribution of profits among shareholders in order to devote them to other purposes." "It is not within the lawful powers of a board of directors to shape and conduct the affairs of a corporation for the merely incidental benefit of shareholders, and for the primary purpose of benefiting others." All the judges concurred in the result. H. L. W.

STARE DECISIS—LIABILITY OF MUNICIPAL CORPORATIONS FOR TORT.—Courts are charged with the duty of declaring the law. They are also required to decide cases. Either one of those functions might be performed with comparative ease if it were divorced from the other, but when the court is simultaneously obliged to do both, the difficulties are very apparent. To decide a case and at the same time to declare the law means that the court is required to generalize every legal proposition upon which it acts in making its decision. But judges are not omniscient. Who can so fully understand the logical implications and the latent possibilities of any rule of law that he can safely announce it as a perpetual guide for the future? This the judges are nevertheless expected to do, for if the law is to be available and certain, its rules must not only be fully formulated but consistently adhered to. The rule of *stare decisis* is a necessary judicial protection extended to the people.

But it is very obvious that the rule cannot be applied rigidly if the law is to keep pace with society as it changes its ideas of legal relations. More or less departure from precedent is constant and inevitable. The common law has for centuries effected such changes by "distinguishing" those cases which

ought not to be governed by the canonized rule. In some cases the courts frankly announce their dissent from the old rule and state a new one. But more frequently they accomplish the same result by "distinguishing" the case before them from the case which announced the precedent. This preserves the appearance of consistency, and at the same time introduces a "variable" into the operation of the rule while preserving the rule itself with whatever value it may possess. In this way the rule is "administered" with a view to keeping its good features and eliminating its bad ones. Within limits the courts are thus able to accomplish the useful and difficult task of shooting so as to "hit it if it is a bear and miss it if it is a cow".

No rule has been "distinguished" away in more cases than the rule that cities are not liable for torts arising out of the performance of governmental functions. An interesting case has just been decided in Iowa. The city of Sioux City purchased an automobile for its police department. One day the authorized driver of the car was using it under the orders of his superior to haul policemen to their beats in different parts of the city, and he negligently caused it to run into the car in which plaintiff's testate was riding, resulting in her death. The court conceded the general rule and then successfully avoided its effect by holding that the hauling of policemen to their beats in an automobile was not necessary for the enforcement of peace and order, but was only a convenience for the policemen; therefore the act was not governmental but corporate, and the city was liable. *Jones* v. *Sioux City* (Iowa, 1919), 170 N. W. 445.

The process of "distinguishing" as a substitute for overruling is one which can be carried too far. At most it is a provisional evolutionary process, which ought to be eventually followed by a restatement of the rule itself. If this is not done the law becomes a mass of special instances buried in a jungle of specious argument and logical subtilty. The "distinguishing" process should only serve as a means for approximating the true rule. Employed for that purpose it preserves to the common law the vital element of adaptability which has always kept Anglo-Saxon legal conceptions responsive to the needs of a constantly changing social order.

In the instance here referred to, it might be asked whether the distinguishing process was not carried far enough to justify the court which announced the decision in restating the rule in the interests of a broader justice. The maritime law, which is operative in our country concurrently with the common law, has been held to require no such limitation on municipal liability as that here referred to. If a New York City fire-boat negligently rams a vessel while going to a fire, the city is liable for the damage, while a New York city fire-engine can negligently smash every vehicle on the street with perfect impunity.—*Workman* v. *New York City*, 179 U. S. 552. And if a Chicago city fire-boat while throwing water on a burning elevator carelessly allows the spray to damage a neighboring vessel, the city is liable, although if the water came from a fire-hydrant on shore the owner of the property injured by it would be without a remedy. *City of Chicago* v. *White Transportation Co.*, 243 Fed. 358, affirmed November 5, 1917, 245 U. S. 660.

In the *Workman Case, supra,* the Court, speaking through Justice WHITE,

emphasizes the wrong and injustice which would result from a rule exempting a municipal owner of a fire-boat from answering in damages for injuries negligently done to private property, and confesses an unwillingness to countenance "the evil consequences growing from thus implanting in the maritime law the doctrine that wrong can be done with impunity". This revolt against the common law rule was vigorously assailed by four of the nine judges of the court in a long opinion based squarely on the doctrine of *"stare decisis"*. But when the *Chicago Case* came up, seventeen years later, there was no effort made to reopen the question.

Legislation is inadequate as a corrective for the rule of *stare decisis,* and the courts should doubtless be constantly alive to the necessity of keeping the law flexible and also unencumbered with an unnecessary cloud of distinctions. E. R. S.